

## DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



September 17, 1990

ALL-COUNTY INFORMATION NOTICE NO. I-72-90

TO: ALL-COUNTY WELFARE DIRECTORS

SUBJECT: ELDER AND DEPENDENT ADULT ABUSE REPORTING:  
CHAPTER 241, STATUTES OF 1990  
CHAPTER 435, STATUTES OF 1990

Chapter 241, Statutes of 1990, (Senate Bill (SB) 1911, Mello) adds a new Section 15630(b) to the Welfare and Institutions Code (W&IC) which states that when two or more persons who are required to report have knowledge of a known or suspected physical abuse, the telephone report shall be made by a selected member of the team. This is in contrast to W&IC 15630(d) (permissive reporting) when two or more persons who are required to report are "present and jointly have knowledge or reasonably suspect" that other types of abuse have occurred, a telephone report may be made by a selected member of the team.

Chapter 241 also amends W&IC 15634(d) to make clear that a mandated reporter who fails to report abuse as required is guilty of a misdemeanor.

Chapter 435, Statutes of 1990 (SB 2571, Lockyer) amends and adds to the definition of "physical abuse," W&IC 15610(c)(6) as follows:

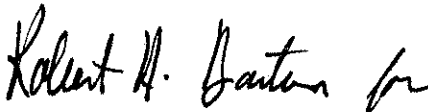
- "Isolation" is eliminated from the definition of physical abuse and will become permissive rather than required reporting.
- "Isolation" has been inserted into the definition of abuse under W&IC 15610(g), and includes any of the following as specified under W&IC 15610(g)(1)(A)(B)(C)(D) (added):
  - (A) Preventing an elder or dependent adult from receiving mail or telephone calls.
  - (B) Preventing contact with family, friends, or concerned persons.
  - (C) False imprisonment (as defined in Penal Code Section 236).
  - (D) Physical restraint to prevent meeting with visitors.

- The above actions, (A) through (D), are subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician (W&IC 15610(g)(2)).
- Also, (A) through (D) do not constitute isolation if the acts are performed in response to a reasonably perceived threat of danger to property or physical safety (W&IC 15610(g)(3)).
- "Psychotropic medication" is added to the definition of physical abuse under W&IC 15610(c)(6) with added conditions as specified under W&IC 15610(c)(6)(A)(B)(C):
  - (A) For punishment.
  - (B) For a period beyond which was authorized by a physician who is providing care to the person.
  - (C) For any purpose not consistent with that authorized by the physician.

The effective date of Chapters 241 and 435 is January 1, 1991.

Copies of the chaptered bills are attached for your reference.

If you have questions or comments, please telephone Robert Barton, Chief, Adult Services Branch at (916) 324-8776 or Lucille Toscano, Analyst, Adult Services Branch at (916) 323-6340.



LOREN D. SUTER  
Deputy Director  
Adult and Family Services

Attachments

cc: CWDA

Senate Bill No. 1911

CHAPTER 241

An act to amend Sections 15630 and 15634 of the Welfare and Institutions Code, relating to aging.

[Approved by Governor July 11, 1990. Filed with  
Secretary of State July 13, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1911, Mello. Aging: elder abuse: reporting.

Under existing law, any elder or dependent adult care custodian, health care practitioner, or employee of a county adult protective services agency or local law enforcement agency who in his or her professional capacity observes an incident of physical abuse to an elder or dependent adult, observes a physical injury which clearly indicates that physical abuse has occurred, or is told by an elder or dependent adult that he or she has experienced physical abuse, is required, among other things, to report the incident to the Department of Aging long-term care ombudsman coordinator or a law enforcement or other appropriate agency.

Existing law specifies that any person who fails to report an instance of elder or dependent adult abuse which he or she knows to exist or reasonably should know to exist, as required by law, is guilty of a misdemeanor.

This bill would instead specify that any person who fails to report an instance of elder or dependent adult abuse, as required by law, is guilty of a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) (1) Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency, who in his or her professional capacity or within the scope of his or her employment, either has observed an incident that reasonably appears to be physical abuse, has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury,

clearly indicates that physical abuse has occurred, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, shall report the known or suspected instance of physical abuse either to the long-term care ombudsman coordinator or to a local law enforcement agency when the physical abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the physical abuse is alleged to have occurred anywhere else, immediately or as soon as possible by telephone, and shall prepare and send a written report thereof within two working days.

(2) The reports required by this section should contain the following information unless the information is unavailable by the person reporting:

(A) The name, address, telephone number, and occupation of the person reporting.

(B) The name and address of the victim.

(C) The date, time, and place of the incident.

(D) Other details, including the reporter's observations and beliefs concerning the incident.

(E) Any statement relating to the incident made by the victim.

(F) The name of any individuals believed to have knowledge of the incident.

(G) The name of the individuals believed to be responsible for the incident and their connection to the victim.

(b) When two or more persons who are required to report have knowledge of a known or suspected physical abuse of an elder or dependent adult, the telephone report shall be made by a member of the team selected by mutual agreement, and a single report shall be made and signed by a selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.

(c) Any care custodian, health practitioner, or employee of an adult protective services agency or local law enforcement agency who has knowledge of or reasonably suspects that other types of elder or dependent adult abuse have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse either to a long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility, or to the county adult protective services agency when the abuse is alleged to have occurred anywhere else. If the conduct involves criminal activity not already covered by subdivision (a), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more persons who are required to report are present and jointly have knowledge or reasonably suspect that other types of abuse of an elder or a dependent adult have occurred, and

when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making such a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(f) (1) An adult protective services agency shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of physical abuse of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision.

Only a written report, sent within two working days, shall be required in the case of types of elder and dependent adult abuse other than physical abuse.

If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she must make it to the long-term care ombudsman coordinator or to a local law enforcement agency. The adult protective services agency shall not accept the reports.

(2) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse involving physical abuse or neglect determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be such a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information

reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(g) A law enforcement agency shall immediately or as soon as practically possible report by telephone to the long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or a dependent adult. A law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(h) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent.

A long-term care ombudsman coordinator and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, which has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the time at which the report becomes a matter of public record.

(i) When a county adult protective services agency, a long-term care ombudsman coordinator, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(j) Each long-term care ombudsman coordinator shall report to the county adult protective services agency monthly on the reports it receives pursuant to this chapter. The reports shall be on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(k) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports

received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

The county's report to the department shall include reports it receives from the long-term care ombudsman coordinator pursuant to subdivision (j).

The State Department of Social Services shall refer to the bureau monthly summaries of the reports of elder and dependent adult abuse, neglect, and abandonment which it receives from county adult protective services agencies.

SEC. 2. Section 15634 of the Welfare and Institutions Code is amended to read:

15634. (a) No care custodian, health practitioner or employee of an adult protective service agency or a local law enforcement agency who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any care custodian, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency, provides the requesting agency with access to the victim of a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report elder or dependent adult abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, health practitioner, or an employee of

an adult protective services agency or a local law enforcement agency may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) Any person who fails to report an instance of elder or dependent adult abuse, as required by this article, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, by a fine of not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Senate Bill No. 2571

CHAPTER 435

An act to amend Sections 15610 and 15632 of the Welfare and Institutions Code, relating to aging.

[Approved by Governor July 25, 1990. Filed with  
Secretary of State July 26, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2571, Lockyer. Aging: elder abuse: isolation.

Under existing law, "abuse of an elder or dependent adult" is defined as physical abuse, neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services necessary to avoid physical harm or mental suffering. Specified persons are required to report incidents of physical abuse and are permitted to report incidents of other types of abuse. Physical abuse is defined as including, under specified conditions, the use of physical or chemical restraint, medication, or isolation.

This bill would instead specify that physical abuse includes the use of physical or chemical restraint, or psychotropic medication, and would recast the conditions under which their use constitutes physical abuse. It would include isolation, as defined, as abuse of an elder or dependent adult, which persons would be permitted to report. It would, in addition, specify that the acts described would be subject to a rebuttable presumption that they do not constitute isolation if performed pursuant to the instructions of a physician, and would not constitute isolation if performed in response to a reasonably perceived threat of danger to property or physical safety.

This bill would make various technical changes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 15610 of the Welfare and Institutions Code is amended to read:

15610. As used in this chapter:

(a) "Elder" means any person residing in this state, 65 years of age or older.

(b) (1) "Dependent adult" means any person residing in this state, between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

(2) "Dependent adult" includes any person between the ages of

18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(c) "Physical abuse" means all of the following:

- (1) Assault, as defined in Section 240 of the Penal Code.
- (2) Battery, as defined in Section 242 of the Penal Code.
- (3) Assault with a deadly weapon or force likely to produce great bodily injury, as defined by Section 245 of the Penal Code.

(4) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(5) Sexual assault, which means any of the following:

- (A) Sexual battery, as defined in Section 243.4 of the Penal Code.
- (B) Rape, as defined in Section 261 of the Penal Code.
- (C) Rape in concert, as described in Section 264.1 of the Penal Code.

(D) Incest, as defined in Section 285 of the Penal Code.

(E) Sodomy, as defined in Section 286 of the Penal Code.

(F) Oral copulation, as defined in Section 288a of the Penal Code.

(G) Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.

(6) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

(A) For punishment.

(B) For a period significantly beyond that for which the restraint or medication was authorized pursuant to the instructions of a physician licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(C) For any purpose not consistent with that authorized by the physician.

(d) "Neglect" means the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following:

(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(3) Failure to protect from health and safety hazards.

(4) Failure to prevent malnutrition.

(e) "Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

(f) "Fiduciary abuse" means a situation in which any person who has the care or custody of, or who stands in a position of trust to, an

elder or a dependent adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of his or her trust.

(g) "Abuse of an elder or a dependent adult" means physical abuse, neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, isolation, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services which are necessary to avoid physical harm or mental suffering.

(1) For purposes of this subdivision, "isolation" includes any of the following:

(A) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.

(B) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor, where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.

(C) False imprisonment, as defined in Section 236 of the Penal Code.

(D) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(2) The acts set forth in paragraph (1) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician licensed to practice medicine in the State of California, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

(3) The acts set forth in paragraph (1) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

(h) "Care custodian" means an administrator or an employee, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff, of any of the following public or private facilities when the facilities provide care for elders or dependent adults:

(1) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(2) Clinics.

(3) Home health agencies.

(4) Adult day health care centers.

(5) Secondary schools which serve 18- to 22-year-old dependent adults and postsecondary educational institutions which serve

dependent adults or elders.

- (6) Sheltered workshops.
- (7) Camps.
- (8) Community care facilities, as defined by Section 1502 of the Health and Safety Code and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.
- (9) Respite care facilities.
- (10) Foster homes.
- (11) Regional centers for persons with developmental disabilities.
- (12) State Department of Social Services and State Department of Health Services licensing divisions.
- (13) County welfare departments.
- (14) Offices of patients' rights advocates.
- (15) Office of the long-term care ombudsman.
- (16) Offices of public conservators and public guardians.
- (17) Any other protective or public assistance agency which provides health services or social services to elders or dependent adults.

(i) "Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family, and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family, and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults.

(j) "Adult protective services agency" means a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

(k) "Adult protective services" means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests; harmed or threatened with harm; caused physical or mental injury due to the action or inaction of another person or their own action due to ignorance, illiteracy, incompetence, mental limitation or poor health; lacking in adequate food, shelter, or clothing; exploited of their income and resources; or deprived of entitlement due them.

(l) "Goods and services which are necessary to avoid physical harm or mental suffering" include, but are not limited to, all of the following:

(1) The provision of medical care for physical and mental health needs.

(2) Assistance in personal hygiene.

(3) Possessing adequate clothing.

(4) Adequately heated and ventilated shelter.

(5) Protection from health and safety hazards.

(6) Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.

(7) Transportation and assistance necessary to secure any of the needs set forth in paragraphs (1) to (6) above.

(m) "Investigation" means that activity necessary to determine the validity of a report of elder or dependent adult abuse, neglect, or abandonment.

(n) "Long-term care ombudsman" means the State Long-Term Care Ombudsman, long-term care ombudsmen of the Department of Aging, and persons acting in the capacity of ombudsman coordinators as described in Chapter 9 (commencing with Section 9700) of Division 8.5.

(o) "Developmentally disabled person" means a person with a developmental disability specified by or as described in subdivision (a) of Section 4512.

(p) "Mental suffering" means deliberately subjecting a person to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.

(q) "Patient's rights advocate" means a person who has no direct or indirect clinical or administrative responsibility for the patient, and who shall be responsible for ensuring that laws, regulations, and policies on the rights of the patient are observed.

(r) "Local law enforcement agency" means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

SEC. 2. Section 15632 of the Welfare and Institutions Code is amended to read:

15632. (a) Any person who enters into employment on or after January 1, 1986, as a care custodian, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment shall sign a statement on a form, which shall be provided by the prospective employer, to the effect that he or she has knowledge of Section 15630 and will comply with its provisions. The signed statement shall be retained by the employer.

(b) Agencies or facilities that employ persons required to make reports pursuant to Section 15630, who were employed prior to January 1, 1986, shall inform those persons of their responsibility to make reports by delivering to them a copy of the statement specified in subdivision (c).

(c) The statement shall be in the following form:

California state law **REQUIRES** care custodians, health practitioners, and employees of adult protective services agencies and local law enforcement agencies to report physical abuse of elders and dependent adults.

Those professionals must report physical abuse under the following circumstances:

(1) When the reporter has observed an incident that reasonably appears to be physical abuse.

(2) When the reporter has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury, clearly indicates that physical abuse has occurred.

(3) When the reporter is told by an elder or a dependent adult that he or she has experienced behavior constituting physical abuse.

The report must be made immediately, or as soon as possible, by telephone to either the long-term care ombudsman coordinator or to a local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the abuse is alleged to have occurred anywhere else, and must be followed by a written report within two working days. The report must include:

(1) The name of the person making the report.

(2) The name, age, and present location of the elder or dependent adult.

(3) The names and addresses of family members or other persons responsible for the elder or dependent adult's care, if known.

(4) The nature and extent of the person's condition.

(5) Any information that led the reporter to suspect that abuse has occurred.

(6) The date of the incident.

State law also **PERMITS** the reporting of other types of abuse of elders and dependent adults, such as neglect, intimidation, fiduciary abuse, abandonment, isolation, or other treatment that results in physical harm, pain, or mental suffering. These reports may be made when the reporter has actual knowledge or reasonably suspects that abuse has occurred. If the conduct involves criminal activity not constituting physical abuse, it may be immediately reported to a law enforcement agency.

The law provides that care custodians, health practitioners, or employees of adult protective services agencies or local law enforcement agencies shall not incur either civil or criminal liability for any report they are required or permitted to make under this law.

However, failure to report physical abuse of an elder or dependent adult is a misdemeanor, punishable by not more than six months in the county jail or by a fine of not more than one thousand dollars (\$1,000), or by both fine and imprisonment.

Reports made under this law are confidential and may be disclosed only to the agencies specified. Violation of the confidentiality provisions is also a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than five hundred dollars (\$500), or by both fine and imprisonment.

The following is the exact text of portions of the elder and dependent adult abuse reporting law which pertain to the responsibilities of professionals who are required to report abuse of elders and dependent adults:

**CONDITIONS UNDER WHICH REPORTING OF PHYSICAL ABUSE IS REQUIRED:**

Subdivision (a) of Section 15630 of the Welfare and Institutions Code:

“(a) (1) Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency, who in his or her professional capacity or within the scope of his or her employment, either has observed an incident that reasonably appears to be physical abuse, has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury, clearly indicates that physical abuse has occurred, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, shall report the known or suspected instance of physical abuse either to the long-term care ombudsman coordinator or to a local law enforcement agency when the physical abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the physical abuse is alleged to have occurred anywhere else, immediately or as soon as possible by telephone, and shall prepare and send a written report thereof within two working days.

(2) The reports required by this section should contain the following information unless the information is unavailable by the person reporting:

(A) The name, address, telephone number, and occupation of the person reporting.

(B) The name and address of the victim.

(C) The date, time, and place of the incident.

(D) Other details, including the reporter's observations and beliefs concerning the incident.

(E) Any statement relating to the incident made by the victim.

(F) The name of any individuals believed to have knowledge of

the incident.

(G) The name of the individuals believed to be responsible for the incident and their connection to the victim."

**CONDITIONS UNDER WHICH REPORTING OF ABUSE IS PERMITTED:**

Subdivision (b) of Section 15630 of the Welfare and Institutions Code:

"(b) Any care custodian, health practitioner, or employee of an adult protective services agency or local law enforcement agency who has knowledge of or reasonably suspects that other types of elder or dependent adult abuse have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse either to a long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility, or to the county adult protective services agency when the abuse is alleged to have occurred anywhere else. If the conduct involves criminal activity not already covered by subdivision (a), it may be immediately reported to the appropriate law enforcement agency."

**PROFESSIONALS WHO ARE REQUIRED TO REPORT PHYSICAL ABUSE OF ELDERS AND DEPENDENT ADULTS:**

(a) Care custodians, as defined by subdivision (h) of Section 15610 of the Welfare and Institutions Code:

"(h) 'Care custodian' means an administrator or an employee, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff, of any of the following public or private facilities when the facilities provide care for elders or dependent adults:

- (1) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.
- (2) Clinics.
- (3) Home health agencies.
- (4) Adult day health care centers.
- (5) Secondary schools which serve 18- to 22-year-old dependent adults and postsecondary educational institutions which serve dependent adults or elders.
- (6) Sheltered workshops.
- (7) Camps.
- (8) Community care facilities, as defined by Section 1502 of the Health and Safety Code and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.
- (9) Respite care facilities.



- (10) Foster homes.
- (11) Regional centers for persons with developmental disabilities.
- (12) State Department of Social Services and State Department of Health Services licensing divisions.
- (13) County welfare departments.
- (14) Offices of patients' rights advocates.
- (15) Office of the long-term care ombudsman.
- (16) Offices of public conservators and public guardians.
- (17) Any other protective or public assistance agency which provides health services or social services to elders or dependent adults."

(b) Health practitioners, as defined by subdivision (i) of Section 15610 of the Welfare and Institutions Code:

"(i) 'Health practitioner' means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker, marriage, family and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults."

(c) Employees of adult protective services agencies, as defined by subdivision (j) of Section 15610 of the Welfare and Institutions Code:

"(j) 'Adult protective services agency' means a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff."

(d) Employees of local law enforcement agencies, as defined by subdivision (r) of Section 15610 of the Welfare and Institutions Code:

"(r) 'Local law enforcement agency' means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff."

#### DEFINITION OF "ELDER":

Subdivision (a) of Section 15610 of the Welfare and Institutions Code:

"(a) 'Elder' means any person residing in this state, 65 years of age or older."

DEFINITION OF "DEPENDENT ADULT":

Subdivision (b) of Section 15610 of the Welfare and Institutions Code:

"(b) (1) 'Dependent adult' means any person residing in this state, between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

(2) 'Dependent adult' includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code."

DEFINITION OF "ABUSE OF AN ELDER OR A DEPENDENT ADULT":

Subdivision (g) of Section 15610 of the Welfare and Institutions Code:

"(g) 'Abuse of an elder or a dependent adult' means physical abuse, neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, isolation, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods and services which are necessary to avoid physical harm or mental suffering.

(1) For purposes of this subdivision, 'isolation' includes any of the following:

(A) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.

(B) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor, where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons:

(C) False imprisonment, as defined in Section 236 of the Penal Code.

(D) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(2) The acts set forth in paragraph (1) shall be subject to a rebuttable presumption that they do not constitute isolation if they

are performed pursuant to the instructions of a physician licensed to practice medicine in the State of California, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

(3) The acts set forth in paragraph (1) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety."

#### DEFINITION OF "PHYSICAL ABUSE":

Subdivision (c) of Section 15610 of the Welfare and Institutions Code:

"(c) 'Physical abuse' means all of the following:

- (1) Assault, as defined in Section 240 of the Penal Code.
- (2) Battery, as defined in Section 242 of the Penal Code.
- (3) Assault with a deadly weapon or force likely to produce great bodily injury, as defined by Section 245 of the Penal Code.
- (4) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
- (5) Sexual assault, which means any of the following:
  - (A) Sexual battery, as defined in Section 243.4 of the Penal Code.
  - (B) Rape, as defined in Section 261 of the Penal Code.
  - (C) Rape in concert, as described in Section 264.1 of the Penal Code.
- (D) Incest, as defined in Section 285 of the Penal Code.
- (E) Sodomy, as defined in Section 286 of the Penal Code.
- (F) Oral copulation, as defined in Section 288a of the Penal Code.
- (G) Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.
- (6) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
  - (A) For punishment.
  - (B) For a period significantly beyond that for which the restraint or medication was authorized pursuant to the instructions of a physician licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.
  - (C) For a purpose other than that authorized by the physician.
- (d) The cost of printing, distribution, and filing of these statements shall be borne by the employer.
- (e) On and after January 1, 1987, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (c) to the person at the same time as it transmits the document indicating licensure or certification to the person.
- (f) As an alternative to the procedure required by subdivision (e),

a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1987.

(g) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b) shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report physical abuse of elders or dependent adults or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other liability for the failure of those persons to comply with the requirements of this chapter.

O